

1 TIFFANY W. TAI, State Bar No. 193271
2 BRAUNSON C. VIRJEE, State Bar No. 290376
3 **ritt, tAI, thvedt & hODGES**
4 A Limited Liability Partnership
5 65 North Raymond Avenue, Suite 320
6 Pasadena, California 91103
7 (626) 685-2550 telephone
8 (626) 685-2562 facsimile

5 Attorneys for Plaintiffs GRYPHON MOBILE
6 ELECTRONICS, LLC and SPACEKEY
(USA), INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

11 GRYPHON MOBILE
12 ELECTRONICS, LLC, a California
13 limited liability company; and
SPACEKEY (USA), INC., a
California corporation,

14 || Plaintiffs,

15 || v.

16 BROOKSTONE, INC., a New
17 Hampshire corporation; H.L. DALIS,
18 INC., a New York corporation;
19 MANCHESTER EQUIPMENT
COMPANY, INC., a New York
corporation doing business as
ARMORALLBATTERY.COM; and
DOES 1 THROUGH 10, inclusive.

Defendants.

Case No. 8:15-CV-2056

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF FOR:**

1. Patent Infringement;
2. Trademark Infringement;
3. Palming Off;
4. Unfair Competition; and
5. Accounting

AND DEMAND FOR JURY TRIAL

24 Plaintiffs, GRYPHON MOBILE ELECTRONICS, LLC (“Gryphon”) and
25 SPACEKEY (USA), INC. (“Spacekey”), by and through the undersigned counsel of
26 record, alleges as follows:

JURISDICTION AND VENUE

1. This is an action for, among other things, infringement of a design patent owned by Spacekey and a federally registered trademark owned by Gryphon.

2. Jurisdiction is conferred upon this Court by 28 U.S.C. § 1331, 28 U.S.C. §§ 1338 (a) and (b), and 28 U.S.C. § 1367(a); and arises under the patent laws of the United States of America, Title 35 of the United States Code, as well as the federal Lanham Act, codified at 15 U.S.C. § 1125.

3. Venue lies in the Central District of California pursuant to 28 U.S.C. §1400(a), as defendants and their agents: (a) have voluntarily availed themselves of the laws and regulations of the State of California and of this District; (b) have had and continue to have continuous and systematic contacts with the residents of California and this District; and (c) have transacted, and are continuing to transact, business with residents of California and this District, such business having an effect in this District. Plaintiffs allege on information and belief that, among other things, defendants have purposefully, continuously, and systematically directed their offers to sell, sales and distribution of products to residents of California and this District by offering to sell, selling and distributing products through their publicly accessible, interactive web sites, including without limitation www.brookstone.com, www.hldalis.com and www.armorallbattery.com.

PARTIES

4. Plaintiff Gryphon Mobile Electronics, LLC is, and at all times relevant was, a California limited liability company, duly authorized to do, and doing, business in the County of Orange, State of California.

1 5. Plaintiff Spacekey (USA), Inc. is, and at all times relevant was, a
2 California corporation, duly authorized to do, and doing, business in the County of
3 Orange, State of California. Gryphon and Spacekey are sometimes referred to
4 collectively as “Plaintiffs” herein.

5

6 6. Plaintiffs are informed and believe, and upon such information and
7 belief allege, that defendant BROOKSTONE, INC. (“Brookstone”) is a New
8 Hampshire corporation with its principal place of business in Merrimack, New
9 Hampshire. Plaintiffs are further informed and believe, and upon such further
10 information and belief allege, that at all times relevant hereto, Brookstone has
11 operated and continues to operate a chain of retail stores, in addition to maintaining
12 its commercial presence on the Internet through its website www.brookstone.com.

13

14 7. Plaintiffs are informed and believe, and upon such information and
15 belief allege, that defendant H.L. DALIS, INC. (“H.L. Dalis”) is a New York
16 corporation with its principal place of business at Long Island City, New York. At
17 all times relevant herein, H.L. Dalis’ marketing efforts includes offering for sale,
18 selling and distributing its products through the publicly accessible and interactive
19 web site www.hldalis.com.

20

21 8. Plaintiffs are informed and believe, and upon such information and
22 belief allege, that defendant MANCHESTER EQUIPMENT CO., INC.
23 (“Manchester”) is a New York corporation with its principal place of business at
24 Pine Plains, New York. Plaintiffs are further informed and believe, and upon such
25 further information and belief allege, that Manchester does business as
26 Armorallbattery.com, and at all times relevant hereto, Manchester has maintained
27 its commercial presence on the Internet by operating and continuing to operate the
28

1 website www.armorallbattery.com. Brookstone, H.L. Dalis and Manchester are
2 sometimes referred to collectively as “Defendants” herein.

4 9. The true names and capacities, whether individual, corporate, associate
5 or otherwise, of defendants sued herein as Does 1 through 10, inclusive, are
6 unknown to Plaintiffs who therefore sue those defendants by such fictitious names.
7 Plaintiffs will amend this Complaint to insert the true names and capacities of such
8 DOE defendants when the same have been ascertained.

10 10. Plaintiffs are informed, believe and thereon allege that each defendant
11 designated herein as a DOE is responsible in some manner for the occurrences and
12 events herein alleged and that plaintiffs' damages were proximately caused by their
13 conduct.

15 11. Plaintiffs are informed, believe and thereon allege that unless otherwise
16 specifically mentioned, each defendant was an agent and/or employee of each of the
17 remaining defendants, and that in doing the things complained of herein was acting
18 within the course and scope of such agency and/or employment.

FACTS COMMON TO ALL CAUSES OF ACTION

22 12. On August 19, 2014, U.S. Patent No. D711,318 S (hereinafter “the ‘318
23 Patent” or “Patent-In-Suit”) was duly and legally issued to Spacekey (USA), Inc.
24 The ‘318 Patent is a design patent that pertains to a mobile charging device that is
25 imported and distributed by Gryphon under its “PowerAll” trademark. True and
26 correct copies of the ‘318 Patent and the certificate of registration of the “PowerAll”
27 mark are attached hereto as Exhibits A and B, respectively.

1 13. In or around March 2015, Gryphon was contacted by a consumer who
2 claimed to have purchased a “PowerAll” mobile charging device from Brookstone
3 that was counterfeit. Upon inquiry, Gryphon learned that Brookstone had been
4 advertising Gryphon’s mobile charging device – the “PowerAll Portable Power
5 Bank” – with Gryphon’s pictures and model number of said device. Consumer
6 orders for said device from the website www.brookstone.com, however, were filled
7 with a knock-off product bearing the “Armorall” brand instead.

9 14. Plaintiffs are informed and believe, and upon such information and
10 belief allege, that the “Armorall” brand charging device is manufactured and/or
11 imported by Manchester, a former customer of Gryphon.

13 15. As early as November 2014, Manchester was notified by Gryphon that
14 the “Armorall” charging device was an infringement upon the ‘318 Patent and
15 Gryphon’s trademark. In March 2015, after Gryphon learned of Brookstone’s
16 fraudulent and misleading conduct, including its false advertising of Gryphon’s
17 “PowerAll” product, Gryphon also sent a cease-and-desist letter to Brookstone to
18 notify Brookstone of Spacekey and Gryphon’s ownership of intellectual property
19 rights.

16. Despite having notice of the Patent-in-Suit and Gryphon's federally
17 registered trademark, Defendants continued to pass off the "Armorall" brand
18 charging device as Gryphon's product. Plaintiffs are further informed and believe,
19 and upon such further information and belief allege, that the knock-off products from
20 "Armorall" were being delivered to Brookstone's customers by H.L. Dalis, a
21 wholesale distributor working in concert with Brookstone.

1 17. In or around August 2015, Plaintiffs sent a cease-and-desist letter to
2 H.L. Dalis, and further correspondence to Brookstone and Manchester demanding,
3 among other things, that they cease their fraudulent and unlawful conduct.

4

5 18. To date, Plaintiffs have not heard back from H.L. Dalis in regards to
6 their cease-and-desist letter. Brookstone, however, feigned ignorance and purported
7 to blame H.L. Dalis – its “product distributor” – for fulfilling orders with the wrong
8 product. All the while, however, Brookstone has refused to provide any kind of
9 substantive documentary evidence to support its assertions. As for Manchester, it
10 responded – through counsel – that the product has been redesigned so as to avoid
11 the claim of the ‘318 Patent. The limited information provided by counsel, however,
12 demonstrates that the redesign was minimal and more importantly, Manchester
13 continued to use photographs of the knock-off product in its advertisement.

14

15 19. Recently, Plaintiffs learned that Manchester has begun to advertise the
16 sale of the infringing product on its websites www.armorallbattery.com and
17 www.piggybackbattery.com, and through certain affiliated sellers including H.L.
18 Dalis.

19

20 20. Defendants have not been licensed under the Patent-in-Suit, nor do they
21 have the right to manufacture, import, market, advertise or distribute products
22 bearing Gryphon’s federally registered “PowerAll” trademark.

23

24 21. Judicial intervention is necessary to enjoin Defendants from causing
25 further injury to Plaintiffs and to compensate Plaintiffs for the damages they have
26 sustained as a result of Defendants’ unlawful conduct.

27

28

FIRST CAUSE OF ACTION
Patent Infringement
(By Plaintiff Spacekey Against All Defendants)

22. Plaintiffs reallege and fully incorporate herein by reference each and every allegation contained in Paragraphs 1 through 21, inclusive.

23. Defendants have directly infringed or indirectly infringed by inducing the infringement, and are continuing to directly infringe or indirectly infringe by inducing the infringement of the ornamental design claimed in the '318 Patent by manufacturing, importing, marketing, advertising and distributing, or by knowing aiding and abetting the manufacture, import, marketing, advertisement and distribution of products that embody the patented design described and claimed in the '318 Patent.

24. Defendants' activities have been without express or implied license from Spacekey.

25. Defendants will continue to infringe the '318 Patent unless enjoined by the Court. As a result of Defendants' infringing activities Spacekey has suffered, and will continue to suffer, irreparable harm for which there is no adequate remedy at law. Spacekey is entitled to preliminary and permanent injunctive relief against such infringement under 35 U.S.C. § 283.

26. As a result of the infringement of the '318 Patent, Spacekey is damaged, has been damaged, will be further damaged, and is entitled to be compensated for such damages, pursuant to 35 U.S.C. § 284, in an amount to be determined at trial.

1 27. Defendants' past and continuing infringement of the '318 Patent has
2 been deliberate and willful. Their conduct warrants an award of treble damages
3 pursuant to 35 U.S.C. § 284, and this is an exceptional case justifying an award of
4 attorneys' fees to Spacekey pursuant to 35 U.S.C. § 285.

5

6 **SECOND CAUSE OF ACTION**

7

8 **Trademark Infringement**

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10 **(By Gryphon Against All Defendants)**

11 28. Plaintiffs reallege and fully incorporate herein by reference each and
12 every allegation contained in Paragraphs 1 through 21, inclusive.

13

14 29. By the actions alleged above, Defendants have infringed and will
15 continue to infringe upon Gryphon's rights in and related to its federally registered
16 "PowerAll" trademark by, among other things, advertising, marketing, offering for
17 sale and/or otherwise placing upon the market unauthorized products bearing
18 Gryphon's federally registered "PowerAll" trademark. Gryphon has sustained and
19 will continue to sustain damages to the value of its products, in that the wrongful acts
20 of Defendants diminish the revenues which Gryphon would otherwise receive from
21 its authorized exploitation of its federally registered trademark.

22

23 30. As a direct and proximate cause of Defendants' conduct, Gryphon has
24 been damaged in an amount to be proven at trial, but in excess of the jurisdictional
25 threshold of this Court.

26

27 31. Gryphon is entitled to an injunction restraining Defendants and each of
28 them, their officers, agents and employees and all persons acting in concert with
29 them from engaging in any further actions in violation of the Lanham Act.

1 32. Defendants' infringement of Gryphon's federally registered trademark
2 is deliberate and willful, warranting an award of treble damages and attorneys' fees
3 under the Lanham Act.

4

5 **THIRD CAUSE OF ACTION**

6 **False Designation of Origin In Violation of the Lanham Act**
7 **(By Gryphon Against All Defendants)**

8

9 33. Plaintiffs reallege and fully incorporate herein by reference each and
10 every allegation contained in Paragraphs 1 through 21, inclusive.

11

12 34. By the actions alleged above, Defendants have used and continue to use
13 in commerce false and misleading representations of fact in connection with its
14 products and services, the likely result of which was to cause confusion or mistake
15 among Gryphon's customers as to the origin of its products. Indeed, Gryphon is
16 informed and believes, and upon such information and belief alleges, that actual
17 confusion and mistake exist as a result of Defendants' concerted conduct in
18 advertising and offering for sale Gryphon's "PowerAll Portable Power Bank" on the
19 Brookstone website, and then delivering to consumers who purchase said product a
20 mobile device bearing the "Armorall" brand.

21

22 35. As a direct and proximate cause of Defendants' conduct, Gryphon has
23 been damaged in an amount to be proven at trial, but in excess of the jurisdictional
24 threshold of this Court.

25

26 36. Gryphon is entitled to an injunction restraining Defendants and each of
27 them, their officers, agents and employees and all persons acting in concert with
28 them from engaging in any further actions in violation of the Lanham Act.

1 37. Defendants' conduct in causing confusion and mistake among
2 Gryphon's customer as to the origin of Defendants' products is deliberate and
3 willful, warranting an award of treble damages and attorneys' fees under the Lanham
4 Act.

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6 **FOURTH CAUSE OF ACTION**

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8 **Unfair Business Practices**

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10 **(By All Plaintiffs Against All Defendants)**

11 38. Plaintiffs reallege and fully incorporate herein by reference each and
12 every allegation contained in Paragraphs 1 through 21, inclusive.

13

14 39. Defendants' conduct, as set forth more fully above, was unlawful, unfair
15 and/or fraudulent and has the potential to cause confusion in the marketplace.

16 40. As a direct and proximate result of Defendants' conduct, Plaintiffs have
17 suffered, and will continue to suffer damages to their business, reputation and
18 goodwill, in an amount to be established at trial.

19

20 41. Defendants' conduct constitutes unfair competition and deceptive
21 practices under California's *Business & Professions Code* sections 17200 et seq. and
22 17500 et seq.

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FIFTH CAUSE OF ACTION
Accounting
(By All Plaintiffs Against All Defendants)

42. Plaintiffs reallege and fully incorporate herein by reference each and every allegation contained in Paragraphs 1 through 21, inclusive.

43. The exact amount of monies received by Defendants and each of them as a result of their unlawful conduct and unauthorized exploitation of Plaintiffs' patents and trademarks is unknown to Plaintiffs and can only be determined by an accounting.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs prays for judgment against Defendants and each of them as follows:

ON THE FIRST CAUSE OF ACTION (For Patent Infringement By Spacekey Against All Defendants):

1. Declaration that the '318 Patent is valid and enforceable;
2. Declaration that each of the Defendants has infringed the '318 Patent;
3. A preliminary and permanent injunction against each of the Defendants and their officers, agents, servants, employees and attorneys, all parent and subsidiary corporations, their assigns and successors in interest, and those persons acting in active concert or participation with them, including distributors and customers, enjoining them from continuing acts of infringement of the '318 Patent;

1 4. An accounting for damages under 35 U.S.C. §284 from each of the
2 Defendants for their respective infringement of the ‘318 Patent, and the award of
3 damages ascertained against each of the Defendants in favor of Plaintiff Spacekey,
4 together with interest as provided by law;

5 5. An award of treble damages against each of the Defendants in view of
6 their willful and deliberate infringement of the Patent-in-Suit; and

7 6. A finding in favor of Spacekey that this is an exceptional case under 35
8 U.S.C. §285.

9

10 **ON THE SECOND AND THIRD CAUSES OF ACTION** (for Violations of
11 the Lanham Act By Plaintiff Gryphon Against All Defendants):

12

13 1. Declaration that the “PowerAll” is valid and enforceable;

14 2. Declaration that each of the Defendants has infringed the “PowerAll”
15 trademark;

16 3. A preliminary and permanent injunction against each of the Defendants
17 and their officers, agents, servants, employees and attorneys, all parent and
18 subsidiary corporations, their assigns and successors in interest, and those persons
19 acting in active concert or participation with them, including distributors and
20 customers, enjoining them from engaging in further actions in violation of the
21 Lanham Act;

22 4. An accounting for damages from each of the Defendants for their
23 respective violation of the Lanham Act, and the award of damages ascertained
24 against each of the Defendants in favor of Plaintiff Spacekey, together with interest
25 as provided by law; and

26 5. An award of treble damages against each of the Defendants in view of
27 their willful and deliberate conduct in violation of the Lanham Act.

28

1 **ON THE FOURTH CAUSE OF ACTION** (for Unfair Business Practices By
2 All Plaintiffs Against All Defendants):
3

4 1. For restitution of all monies otherwise acquired by Defendants by means
5 of their unlawful and unfair business practices; and
6 2. For an injunction prohibiting Defendants from engaging in further
7 unlawful or unfair business practices.

8
9 **ON THE FIFTH CAUSE OF ACTION** (for Accounting By All Plaintiffs
10 Against All Defendants):
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12 1. That Defendants and each of them be required to account for all gains,
13 profits and advantages derived from their violations of law; and
14 2. That all gains profits and advantages derived by Defendants and each of
15 them for their violations of law be deemed to be held in constructive trust for the
16 benefit of Plaintiffs.

17
18 **ON ALL CAUSES OF ACTION:**

19 1. For all reasonable attorney fees;
20 2. For costs of suit incurred by Plaintiffs; and
21 3. For such other relief as the Court deems just and proper.

22
23 DATED: December 8, 2015

Respectfully submitted,

24 RITT, TAI, THVEDT & HODGES, LLP

25 /S/ TIFFANY W. TAI

26 **TIFFANY W. TAI**
27 Attorney for Plaintiffs GRYPHON MOBILE
28 ELECTRONICS, LLC and SPACEKEY (USA),
 INC.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs hereby demand a jury trial of all issues raised in this Complaint.

DATED: December 8, 2015

Respectfully submitted,

ritt, tai, thvedt & hedges, llp

/S/ TIFFANY W. TAI

TIFFANY W. TAI
Attorney for Plaintiffs GRYPHON MOBILE
ELECTRONICS, LLC and SPACEKEY
(USA), INC.